



February 20, 2009

HOUSE BILL No. 1495

DIGEST OF HB 1495 (Updated February 19, 2009 8:56 am - DI 107)

Citations Affected: IC 16-18; IC 16-41.

Synopsis: Lead in children's products. Prohibits use of toxic substances in toys and child care articles. Requires the department of health to administer a program for the prohibition of toxic substances in toys and child care articles. Establishes civil penalties for violations. Requires a manufacturer to recall prohibited products. Creates the toxic substances in children's products fund (fund) to receive civil penalties assessed for the use of toxic substances in toys and child care articles. Provides that money in the fund is to be used for public awareness, prevention, toxic substance testing, and children's safety programs. Makes a continuous appropriation.

Effective: July 1, 2009.

**VanDenburgh, Bell, Barnes,
Bischoff**

January 14, 2009, read first time and referred to Committee on Family, Children and Human Affairs.
February 19, 2009, amended, reported — Do Pass.

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HB 1495—LS 6951/DI 14+



February 20, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1495

A BILL FOR AN ACT to amend the Indiana Code concerning health and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 16-18-2-54.3 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2009]: **Sec. 54.3. "Child", for purposes of**
4 **IC 16-41-39.5, has the meaning set forth in IC 16-41-39.5-1.**
5 SECTION 2. IC 16-18-2-54.4 IS ADDED TO THE INDIANA
6 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
7 [EFFECTIVE JULY 1, 2009]: **Sec. 54.4. "Child care article", for**
8 **purposes of IC 16-41-39.5, has the meaning set forth in**
9 **IC 16-41-39.5-2.**
10 SECTION 3. IC 16-18-2-69.1 IS ADDED TO THE INDIANA
11 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
12 [EFFECTIVE JULY 1, 2009]: **Sec. 69.1. "Consumer", for purposes**
13 **of IC 16-41-39.5, has the meaning set forth in IC 16-41-39.5-3.**
14 SECTION 4. IC 16-18-2-143, AS AMENDED BY P.L.102-2008,
15 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
16 JULY 1, 2009]: Sec. 143. (a) "Fund", for purposes of IC 16-26-2, has
17 the meaning set forth in IC 16-26-2-2.

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(b) "Fund", for purposes of IC 16-31-8.5, has the meaning set forth in IC 16-31-8.5-2.

(c) "Fund", for purposes of IC 16-41-39.4, refers to the childhood lead poisoning prevention fund established by IC 16-41-39.4-3.1.

(d) "Fund", for purposes of IC 16-46-5, has the meaning set forth in IC 16-46-5-3.

(e) "Fund", for purposes of IC 16-46-12, has the meaning set forth in IC 16-46-12-1.

(f) "Fund", for purposes of IC 16-41-42.2, has the meaning set forth in IC 16-41-42.2-2.

(g) "Fund", for purposes of IC 16-41-39.5, has the meaning set forth in IC 16-41-39.5-4.

SECTION 5. IC 16-18-2-274 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 274. (a) "Person" means, except as provided in subsections (b), (c), and (d), an individual, a firm, a partnership, an association, a fiduciary, an executor or administrator, a governmental entity, or a corporation.

(b) "Person", for purposes of IC 16-25, has the meaning set forth in IC 16-25-1.1-8.

(c) "Person", for purposes of IC 16-31, means an individual, a partnership, a corporation, an association, a joint stock association, or a governmental entity other than an agency or instrumentality of the United States.

(d) "Person", for purposes of IC 16-42-10, has the meaning set forth in IC 16-42-10-3.

(e) "Person", for purposes of IC 16-41-39.5, has the meaning set forth in IC 16-41-39.5-5.

SECTION 6. IC 16-18-2-352.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 352.5. **"Toxic substance", for purposes of IC 16-41-39.5, has the meaning set forth in IC 16-41-39.5-6.**

SECTION 7. IC 16-18-2-352.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 352.7. **"Toy", for purposes of IC 16-41-39.5, has the meaning set forth in IC 16-41-39.5-7.**

SECTION 8. IC 16-41-39.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 39.5. Toxic Substances in Children's Products

Sec. 1. As used in this chapter, "child" refers to an individual who is seven (7) years of age or younger.

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1 Sec. 2. As used in this chapter, "child care article" means a
2 product designed or intended by the manufacturer to:

- 3 (1) facilitate the sleep, relaxation, or feeding of a child; or
4 (2) help a child with sucking or teething.

5 Sec. 3. As used in this chapter, "consumer" has the meaning set
6 forth in 15 U.S.C. 2051 through 2085.

7 Sec. 4. As used in this chapter, "fund" refers to the toxic
8 substances in children's products fund established by section 12 of
9 this chapter.

10 Sec. 5. As used in this chapter, "person" means:

- 11 (1) an individual;
12 (2) a partnership;
13 (3) a corporation;
14 (4) an association;
15 (5) a governmental entity; or
16 (6) another legal entity.

17 Sec. 6. As used in this chapter, "toxic substance" means:

- 18 (1) a substance:
19 (A) that contains lead; and
20 (B) that exceeds the lead limits set forth in 15 U.S.C.
21 1278a(a)(2); or
22 (2) a substance:
23 (A) that is the coating on an item;
24 (B) that contains lead; and
25 (C) that exceeds the lead limits set forth in 15 U.S.C.
26 1278a(a)(2).

27 Sec. 7. As used in this chapter, "toy" means an article designed
28 and made for the amusement of a child or for the child's use in
29 play.

30 Sec. 8. The department shall adopt rules under IC 4-22-2 to
31 administer this chapter.

32 Sec. 9. (a) A person may not:

- 33 (1) use a toxic substance in making a toy or child care article;
34 or
35 (2) apply a toxic substance to a toy or child care article that
36 has been made;

37 in Indiana.

38 (b) A person may not:

- 39 (1) sell;
40 (2) offer for sale; or
41 (3) transfer;

42 in Indiana a toy or child care article that contains a toxic

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substance.

(c) This section does not apply to the sale of a collectible object that is not marketed or intended to be used by a child as a toy.

Sec. 10. (a) The state department, in accordance with IC 4-21.5, may assess the following civil penalties against a person for a violation of this chapter:

(1) If:

(A) the person is not an individual consumer; and

(B) the violation is the person's first violation of this chapter;

a civil penalty of not more than one hundred dollars (\$100) per item and a total penalty of not more than five hundred dollars (\$500) per item.

(2) If:

(A) the person is not an individual consumer; and

(B) the violation is the person's second violation of this chapter;

a civil penalty of not less than five hundred dollars (\$500) per item and a total penalty of not more than twenty-five thousand dollars (\$25,000).

(3) If:

(A) the person is not an individual consumer; and

(B) the violation is the person's third or subsequent violation of this chapter;

a civil penalty of not more than one thousand dollars (\$1,000) per item, and a total penalty of not more than fifty thousand dollars (\$50,000).

(4) If the person:

(A) is not an individual consumer; and

(B) knowingly violates this chapter;

a civil penalty of not more than three (3) times the amount of one thousand dollars (\$1,000) per item, and a total civil penalty of not more than three times the amount of fifty thousand dollars (\$50,000).

(5) If:

(A) the person is the manufacturer of the product; and

(B) the violation is the person's first violation of this chapter;

a civil penalty of not more than five thousand dollars (\$5,000) for each violation.

(6) If:

(A) the person is the manufacturer of the product; and

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1 (B) the violation is the person's second or subsequent
 2 violation of this chapter;
 3 a civil penalty of not more than ten thousand dollars
 4 (\$10,000).

5 (b) A civil penalty that would otherwise be assessed against a
 6 person under this section may be waived by the state department
 7 if the state department determines that the person acted in good
 8 faith:

- 9 (1) to comply with this chapter;
 10 (2) to pursue with due diligence compliance with this chapter;
 11 or
 12 (3) to promptly correct any noncompliance after the discovery
 13 of a violation of this chapter.

14 (c) Money received by the state department under this section
 15 shall be deposited in the fund.

16 Sec. 11. A person who manufactures, sells, or distributes a child
 17 care article or toy in violation of this chapter must recall the
 18 product and reimburse the:

- 19 (1) retailer who sold the product to a consumer; or
 20 (2) consumer who purchased the product;
 21 for the price of the product and any expenses incurred by the
 22 retailer or consumer in connection with the product.

23 Sec. 12. (a) The toxic substances in children's products fund is
 24 established for:

- 25 (1) the development of programs to promote public awareness
 26 of toxic substances in toys;
 27 (2) prevention;
 28 (3) toxic testing; and
 29 (4) the development of programs to promote children's safety.

30 The state department shall administer the fund.

31 (b) The fund consists of the following:

- 32 (1) Appropriations.
 33 (2) Civil penalties assessed under section 10 of this chapter.
 34 (3) Gifts.
 35 (4) Bequests.
 36 (5) Grants.

37 (c) The expenses of administering the fund shall be paid from
 38 money in the fund.

39 (d) The treasurer of state shall invest the money in the fund not
 40 needed to meet the obligations of the fund in the same manner as
 41 other public money may be invested. Interest that accrues from
 42 these investments shall be deposited in the fund.

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1 **(e) Money in the fund at the end of a state fiscal year does not**
2 **revert to the state general fund.**

3 **(f) Money in the fund is continuously appropriated to the state**
4 **department for purposes set forth in subsection (a).**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Family, Children and Human Affairs, to which was referred House Bill 1495, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 20, delete "has a" and insert "**exceeds the**".

Page 3, line 20, delete "content that is more than" and insert "**limits set forth in 15 U.S.C. 1278a(a)(2); or**".

Page 3, delete lines 21 through 22.

Page 3, line 26, delete "has a" and insert "**exceeds the**".

Page 3, line 26, delete "content that is more than" and insert "**limits set forth in 15 U.S.C. 1278a(a)(2).**".

Page 3, delete lines 27 through 28.

and when so amended that said bill do pass.

(Reference is to HB 1495 as introduced.)

SUMMERS, Chair

Committee Vote: yeas 11, nays 0.

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